

NEWSLETTER

Collateral Estoppel in Connecticut

"The common-law doctrine of collateral estoppel, or issue preclusion, embodies a judicial policy in favor of judicial economy, the stability of former judgments and finality.... Collateral estoppel... prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties [or those in privity with them] upon a different claim.... For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated in the first action. It also must have been actually decided and the decision must have been necessary to the judgment." (Internal quotation marks omitted.) [Birnie v. Electric Boat Corp., 288 Conn. 392, 405, 953 A.2d 28 \(2008\)](#).

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In the present case, the defendants twice filed an answer and special defenses. On January 27, 2006, the defendants pleaded nine special defenses and on December 13, 2007, they pleaded eleven special defenses in response to the plaintiff's April 5, 2007 amended complaint. The defendants did not specifically plead res judicata or collateral estoppel as an affirmative defense. Rather, they raised those defenses for the first time in their respective motions for summary judgment.

It is well established that res judicata and collateral estoppel are affirmative defenses that may be waived if not properly pleaded. See, e.g., [Wilcox v. Webster Ins., Inc., 294 Conn. 206, 222, 982 A.2d 1053 \(2009\)](#) ("[c]ollateral estoppel is an affirmative defense that may be waived if not properly pleaded"); [Anderson v. Latimer Point Management Corp., 208 Conn. 256, 263, 545 A.2d 525 \(1988\)](#) (res judicata "a legal doctrine which must be specially pleaded"); [Gaer Bros., Inc. v. Mott, 144 Conn. 303, 310, 130 A.2d 804 \(1957\)](#) ("[r]es judicata must be pleaded in an answer as a special defense"); [Sydoriak v. Zoning Board of Appeals, 90 Conn.App. 649, 657, 879 A.2d 494 \(2005\)](#) (collateral estoppel claim deemed waived due to failure to plead it as special defense); [Carnese v. Middleton, 27 Conn.App. 530, 537, 608 A.2d 700 \(1992\)](#) ("[c]ollateral estoppel, like res judicata, must be specifically pleaded by a defendant as an affirmative defense"); cf. Practice Book § 10-50 ("res judicata must be specially pleaded" as defense). The defendants failed to comply with that requirement.

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